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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,752	02/08/2005	Klemens Kieninger	502901-330PUS	2727

27799 7590 01/26/2010  
COHEN, PONTANI, LIEBERMAN & PAVANE LLP  
551 FIFTH AVENUE  
SUITE 1210  
NEW YORK, NY 10176

EXAMINER
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FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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01/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,752	<b>Applicant(s)</b> KIENINGER ET AL.	
	<b>Examiner</b> Charles G. Freay	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

This office action is in response to the Amendment of November 24, 2009. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

### ***Claim Objections***

Claim 2 is objected to because of the following informalities: in line 2 after "only" "a" should be inserted and after "tube" "is" should be "are". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 10 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawert (USPN 5,139,000) as set forth in the office action of September 2, 2009.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 7, 10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP -'090 in view of Becker et al and Sawert.

JP-'090 discloses a suction jet pump having a propulsion fluid pipe 13, a mixing tube 8, and a suction line 12 which connects to the suction jet pump at an intake orifice, and having the mixing tube within a pot 9 which is coupled to and fills a vertically oriented baffle 15. The mixing tube is perpendicular to the bottom of the pot and the pot and the suction jet pump and fluidly connected. JP-'090 does not disclose the propulsion jet nozzle having a round orifice, the pump being connected to the pot by a latch, the jet pump being integrally formed with the pot or the pot being directly connected to the baffle. Becker et al disclose a suction jet pump used in a similar fuel tank environment as JP-'090 and having a round propulsion jet 10 outlet nozzle 11 and a latch 20 for connecting and securing the pump in place. Sawert, as discussed above, discloses a similar arrangement with a pot directly connected to a vertically oriented baffle. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a propulsion jet nozzle and connection assembly as taught by Becker et al for the generically disclosed suction jet pump in JP-'090 as a well known and simple jet pump structure which is easily connected and disconnected to the pot arrangement. It also would have been obvious to directly connect the pot to the baffle as taught by Sawert as an simple means of securing the pot relative to the baffle.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert as set forth in the office action of September 2, 2009.

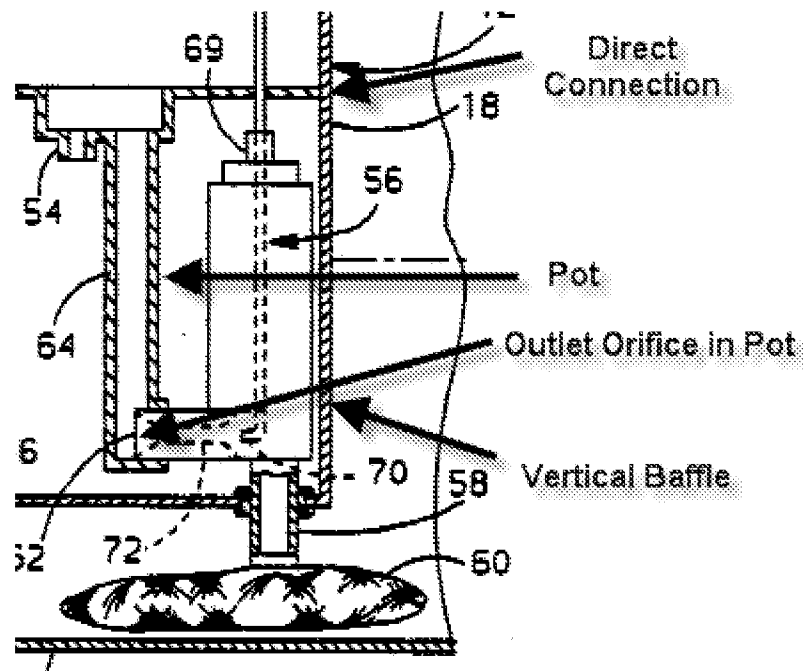
Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert as applied to claim 8 above, and further in view of Ramamurthy et al as forth in the office action of September 2, 2009.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-'090 in view of Becker et al and Sawert as applied to claim 3 above, and further in view of Herzog et al as forth in the office action of September 2, 2009.

### ***Response to Arguments***

Applicant's arguments filed November 24, 2009 have been fully considered but they are not persuasive. The applicant argues that Sawert and JP-'090 do not disclose a pot directly connected to a vertically oriented baffle. The examiner respectfully disagrees.

In the Sawert reference a single piece of material 22 forms the pot structure 54, 65. The element of Sawert is directly connected to the vertically oriented baffle 12. The examiner has detailed these limitations as they are taught by Sawert in order to aid the applicant's understanding of the examiner's interpretation of how the reference anticipates the claims.



With regards to the newly amended claims and the limitation of the pot being directly connected to the vertical baffle the arguments above address these arguments, along with the newly presented rejection of JP-'090 in view of Sawert and Becker as set forth above. It is noted that in JP-'090 the schematic representation does not disclose how the pot 9 and the vertical baffle 15 are connected. However, it is clear that the port is at the minimum indirectly connected to the baffle or else the pot would rattle and translate around the inside of the baffle as the device moved. The guidance provided by Sawert of directly connecting the two elements provides a simple mechanism for securing the pot relative to the baffle.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/  
Primary Examiner  
Art Unit 3746

CGF  
January 23, 2010